

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MB Docket No. 04-144
)	
PISCATAWAY BOARD OF EDUCATION)	
)	
For Renewal of License)	Facility ID No. 52686
For Noncommercial Educational)	File No. BPED-19980427WA
Station WVPH(FM), Piscataway, New Jersey)	
)	
and)	
)	
KING'S TEMPLE MINISTRIES, INC.)	
)	
For Construction Permit)	Facility ID No. 91347
For a New Noncommercial Educational)	File No. BPED-19980805MB
FM Station, Plainfield, New Jersey)	

To: Marlene H. Dortch, Secretary

Attention: Chief, Audio Division
Media Bureau

**REPLY TO
OPPOSITION TO PETITION FOR RECONSIDERATION**

Piscataway Board of Education ("Piscataway"), by counsel, pursuant to §1.45 of the Commission's Rules, hereby respectfully submits this reply to the "Opposition to Petition for Reconsideration" submitted in this proceeding on May 19, 2004 by King's Temple Ministries, Inc. ("KTM"). In support hereof, Piscataway submits the following:

1. KTM's Changed Ownership Structure is Violative of Section 73.3573 of the Commission's Rules In its opposition pleading, KTM admits that its

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ownership structure has changed since 1998, and KTM has attempted to amend its application to bring such information up-to-date. *See, KTM's Opposition at page 6; KTM's "Motion for Leave to Amend and Amendment" dated May 10, 2004.* KTM has argued that the changes in its ownership structure were not radical but rather pro forma in nature and not dispositive vis-a-vis Section 73.3573 of the Rules.¹ In support, KTM relies upon *In Re Transfers of Control of Certain Licensed Non-Stock Entities*, 4 FCC Rcd. 3403, 3405-06 (1989). KTM's conclusions of fact are illogical, and KTM is not only unqualified to rely upon the FCC policy it has cited, but it has not cited the complete policy.

2. To claim that KTM's ownership structure has not undergone a radical change since 1998 is an egregious mischaracterization of the truth. Piscataway provides significant detail about such changes in its "Petition for Reconsideration" but a brief review of those matters is warranted here in reply. A comparison of the 1998 ownership structure of KTM that was reported in application BPED-19980805MB to the 2003 ownership structure of KTM that was reported in the recent WKMB-AM ownership report reveals the following dispositive changes:

- a. There were four (4) board members of KTM in 1998; there are eleven (11) board members today.
- b. There were four (4) voting board members of KTM in 1998; there are seven (7) voting board members today.
- c. In 1998, Gary Kirkwood, Thomas Mobley, Sandra Crofton and Vernon Kirkwood collectively had 100% ownership and 100% voting power; today two of the original four individuals (Sandra Crofton and Vernon

¹ It is quite interesting to learn that KTM has also changed its corporate name, as it admits in Footnote No. 1 to its "Opposition to Petition for Reconsideration."

Kirkwood) are no longer principals of KTM, and Gary Kirkwood and Thomas Mobley retain only 28.4% of the voting power. In other words, **since 1998 there has been a 71.6% change in the voting power of the KTM principals.**

- d. Of the eleven (11) current board members of KTM, only two (2) of those individuals were board members in 1998. Therefore, **there has been an 82% change in the board structure of KTM since 1998.**

3. It is also important to note that KTM's ownership structure changed several times between 1998 and the present, and at no time was the Commission apprised of these facts within the context of application BPED-19980805MB. KTM is a New Jersey non-profit corporation, and a review of the public files of the New Jersey State Treasurer and New Jersey Division of Revenue reveal the following:

- a. On January 11, 2001, KTM reported that it had seven (7) members. *See, Petition for Reconsideration, at Exhibit No. 3.*
- b. On February 19, 2004, KTM reported to the State of New Jersey that it has only three (3) officers and directors -- Gary Kirkwood (President), Melissa Prayer (Secretary) and Thomas Mobley (Vice President). *See, Petition for Reconsideration, at Exhibit No. 4.*

In light of the foregoing, the changes in the ownership structure of KTM triggers Section 73.3573 of the Commission's Rules.

4. Irrespective of the foregoing, KTM's reliance upon *In Re Transfers of Control of Certain Licensed Non-Stock Entities* is inappropriate. To begin with, the Commission's policy relates to licensed non-stock entities. KTM, within the context of application BPED-19980805MB, is not a licensee of the Commission. Assuming arguendo that KTM could be deemed a Commission licensee here as a result of its Year 2003 acquisition of Radio Station WKMB-AM, the facts presented here and in more detail in Piscataway's "Petition for Reconsideration" demonstrate that from

1998 through early 2003, KTM's ownership structure underwent a major change before KTM ever became a broadcast licensee. Therefore, KTM's non-licensee status during the major changes in its ownership from 1998 to early 2003 still takes it outside of policy it relies upon.

5. It must also be noted that in relying upon *In Re Transfers of Control of Certain Licensed Non-Stock Entities*, KTM has omitted a vital aspect of that policy. Such *pro forma* changes in ownership still require the prior consent of the Commission through the short-form application process. *Id.*, at para. 16. KTM has taken the position that it was not required to do anything as its ownership structure changed. KTM is wrong. As an applicant it was required to submit timely Section 1.45 reporting amendments.² And, if KTM had been a licensee, it would have been required to submit a short-form transfer of control application. Therefore, KTM's failure to avail itself of the requisite Commission's procedures bring us back to where we started -- pursuant to Section 73.3573 of the Commission's Rules, there has been a major change in the ownership structure of KTM since 1998, which requires a new file number be assigned to KTM's 1998 application, if such circumstances permit. In this instance, KTM's application cannot be returned to the processing line

² As Piscataway pointed out in its "Petition for Reconsideration," when the Commission amended its broadcast application processing policy in 1984 to adopt what is now FCC Rule 73.3573, it clearly stated that original parties to an application must retain a 50% ownership interest in the application to avoid the "major change" consequences. *See, Processing of Broadcast Applications*, 56 RR 2d 941 (1984). There is no question that were KTM to have amended its application as it was required to do, such an amendment would have been considered a "suicide" amendment requiring the assignment of a new file number and a dismissal of its application from consideration in the context of Piscataway's license renewal application. *See, C. Ray Helton*, 66 RR 2d 1736 (*M. Med. Bur.* 1989) at para. 9.

and processed at a later date. Since KTM's 1998 application was filed in the context of a Public Notice filing deadline in response to the filing of the WVPH-FM license renewal application, KTM does not now have the opportunity to resurrect its application. Accordingly, KTM's application must be dismissed, with prejudice.

6. Piscataway would certainly be harmed if the Commission imposes a time-share arrangement. KTM argues that Piscataway's reliance upon the *Seattle Public Schools* series of cases is wrong, and that Piscataway would not be harmed if an involuntary time-share arrangement is imposed. *See, KTM's Opposition, at page 5.* Piscataway strongly believes otherwise. While no two cases present the exact same circumstances, Piscataway believes that the reported case law here is helpful to its position. KTM argues that in the distant past, Piscataway once operated its radio station as part of a share-time arrangement. That is true, but nowhere does KTM argue that Piscataway did not fulfill its FCC obligations under that prior time-share arrangement. And, when the prior time-share arrangement terminated, Piscataway had an absolute right to request and expect a full license schedule -- which is what the past five years of operation so strongly evidences. There is no Commission policy that requires a prior time-share licensee to remain a time-share licensee forever, as KTM seems to argue.

7. The Commission cannot judge Piscataway solely on a 1998 "snap shot" analysis of its broadcast operations without any regard to Piscataway's broadcast record from 1999 to 2004, and without any regard to Piscataway's proposed broadcast operations for the future. In *Seattle Public Schools*, the licensee had averaged only 67 hours per week of programming during a seven-month period of

its prior license term, and had averaged 84 hours per week the remainder of its license term. And, since the licensee proposed to operate its station for 107 hours per week during the new license term, the Commission decided that further consideration of a challenger's time-sharing proposal was unnecessary. *Seattle Public Schools, 65 RR 2d 1621 (Rev. Bd. 1989) at paras. 78-82.* Therefore, the Commission is obligated to look not only at the licensee's performance prior to the license renewal application filing, but also its plans for the future. Where, as here, Piscataway has operated WVPH-FM full time for the past five years, the Commission should afford similar treatment to Piscataway and renew the WVPH-FM license without consideration of KTM's time-sharing proposal. Should an involuntary time-share arrangement be imposed, Piscataway would be harmed since all of its hard work during the past five years, and associated substantial monetary commitment, would be chilled with a forced truncated schedule. A full-time community voice would be silenced part-time, many student staff persons and certain community volunteers would be relieved of their responsibilities, and KTM -- which now owns a broadcast voice in WKMB-AM -- would be provided a second broadcast outlet. Yes, Piscataway would most definitely be harmed if the Commission imposes the time-share arrangement.

Conclusion

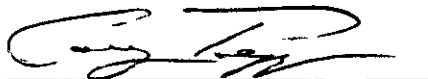
The Commission's conclusions of fact and conclusions of law set forth in the *Hearing Designation Order, DA 04-957 (released April 9, 2004)* must be reconsidered and reversed. KTM's competing proposal must be disqualified since its ownership structure has undergone a major change since 1998. On the other hand, Piscataway

had demonstrated its qualifications for an unrestricted license renewal as it has been a diligent, full-time broadcast licensee for the past five consecutive years. And, Piscataway has demonstrated its future commitment to full-time broadcast operations

WHEREFORE, the foregoing premises considered, Piscataway respectfully requests that its Petition for Reconsideration be GRANTED, that the WVPH-FM license renewal application BPED-19980427WA be GRANTED without conditions, and that the KTM application BPED-19980805MB be DISMISSED.

Respectfully submitted,

PISCATAWAY BOARD OF EDUCATION

By: 

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May 24, 2004

CERTIFICATE OF SERVICE

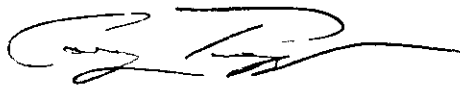
I, Cary S. Tepper, Esquire, hereby certify that on this 24th day of May, 2004, I have served a copy of the foregoing "**Reply to Opposition to Petition for Reconsideration**" first-class, postage-prepaid, on the following:

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Cary S. Tepper, Esq.

*denotes Delivery By Hand

³ Although this "Petition for Reconsideration" will be acted upon by the Media Bureau, a courtesy copy is also being hand delivered to the Honorable Arthur I. Steinberg, Administrative Law Judge, since he will preside over these matters should they ultimately proceed to a hearing.